

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH CENTRAL DIVISION

JETPAY MERCHANT SERVICES, LLC; a  
Texas limited liability company; JETPAY,  
LLC, a Texas limited liability company;  
JETPAY ISO SERVICES, LLC, a Texas  
limited liability company; and WLES, L.P., a  
Texas limited partnership;

*Plaintiffs,*

v.

MERRICK BANK CORPORATION,  
a Utah corporation,

*Defendant.*

JETPAY MERCHANT SERVICES, LLC,  
a Texas limited liability company;  
and WLES, L.P.,  
a Texas limited partnership;

*Plaintiffs,*

v.

MERRICK BANK CORPORATION,  
a Utah corporation,

*Defendant.*

**ORDER**

1. GRANTING MOTION IN LIMINE (DKT. 123);
2. GRANTING MOTION TO CONSOLIDATE CASES (DKT. 150); AND
3. DENYING WITHOUT PREJUDICE MOTION TO STRIKE JURY DEMAND (DKT. 151)

Case No. 2:12-cv-197-RJS-BCW

Judge Robert J. Shelby  
Magistrate Judge Brook C. Wells

**ORDER**

1. GRANTING MOTION TO DISMISS SECOND AMENDED COMPLAINT (DKT. 66);
2. DENYING MOTIONS FOR LEAVE TO FILE AMENDED COMPLAINTS (DKTS. 72 AND 103);
3. DENYING MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE IN SUPPORT OF PLAINTIFFS' RESPONSE TO MOTION TO DISMISS (DKTS. 90, 97, 105, 137);
4. GRANTING MOTION IN LIMINE (DKT. 113);
5. GRANTING MOTION TO CONSOLIDATE (DKT. 139); AND
6. DENYING WITHOUT PREJUDICE MOTION TO STRIKE JURY DEMAND (DKT. 140)

Case No. 2:14-cv-149-RJS-BCW

Judge Robert J. Shelby  
Magistrate Judge Brook C. Wells

JETPAY MERCHANT SERVICES, LLC; a Texas limited liability company; JETPAY, LLC, a Texas limited liability company; JETPAY ISO SERVICES, LLC, a Texas limited liability company; and WLES, L.P., a Texas limited partnership;

*Plaintiffs,*

v.

MERRICK BANK CORPORATION,  
a Utah corporation,

*Defendant.*

**ORDER CONSOLIDATING CASE  
INTO  
CASE NO. 2:12-CV-197-RJS-BCW**

Case No. 2:14-cv-928-RJS-BCW

Judge Robert J. Shelby  
Magistrate Judge Brook C. Wells

Before the court are several Motions pending in two related cases: 1) *JetPay Merchant Services, LLC; JetPay LLC; JetPay ISO Services LLC; and WLES, LP v. Merrick Bank Corporation*, Case No. 2:12-cv-197-RJS-BCW; and *JetPay Merchant Services, LLC and WLES, LP v. Merrick Bank Corporation*, Case No. 2:14-cv-149-RJS-BCW. A third case before the court involves the same parties as the other cases: *JetPay Merchant Services, LLC; JetPay LLC; JetPay ISO Services LLC; Universal Business Payment Solutions Acquisition Corporation; and WLES, LP v. Merrick Bank Corporation*, Case No. 2:14-cv-928-RJS-BCW.

On January 26, 2016, the court held a hearing in Case Nos. 2:12-cv-197-RJS-BCW and 2:14-cv-149-RJS-BCW. Appearing for Plaintiffs was T. Micah Dortch. Daniel Gurfein and Jeffrey Williams appeared for the Defendant, Merrick Bank Corporation. At the hearing, the court ruled as follows for the reasons it stated on the record:

**Case No. 2:12-cv-197-RJS-BCW**

- 1) Defendant's Motion in Limine to Exclude the Opinion Testimony of Christopher W. Martin (Dkt. 123) is GRANTED. If Plaintiffs later determine that different opinions from Mr. Martin are required, they shall seek leave of court before providing a new report from Mr. Martin;
- 2) Defendant's Motion to Consolidate (Dkt. 150) is GRANTED. Case No. 2:14-cv-149-RJS-BCW shall be consolidated into this case for all purposes. Additionally, pursuant to the stipulation of all parties at the January 26, 2016 hearing, Case No. 2:14-cv-928-RJS-BCW shall also be consolidated into this case for all purposes. All documents pertaining to any of these three matters henceforth shall be filed in this case, which has the lowest-numbered docket; and
- 3) Defendant's Motion to Strike Jury Demand (Dkt. 151) DENIED WITHOUT PREJUDICE.

**Case No. 2:14-cv-149-RJS-BCW**

- 1) Defendant Merrick Bank Corporation's Motion to Dismiss Plaintiffs' Second Amended Complaint (Dkt. 66) is GRANTED.
  - a. The following Causes of Action in Plaintiffs' Second Amended Complaint (Dkt. 65) are dismissed WITH PREJUDICE, pursuant to Merrick's Motion and the Plaintiffs' agreement: 1) First Cause of Action—for Violation of Texas Insurance Code § 101.201; 2) Third Cause of Action—for Fraud; and 3) Sixth Cause of Action—Breach of Fiduciary Duty.

- b. The remaining Causes of Action in the Second Amended Complaint are dismissed WITHOUT PREJUDICE. Plaintiffs may seek to refile them in a new consolidated Complaint to be filed no later than February 25, 2016, in consolidated case, Case No. 2:12-cv-197-RJS-BCW. Defendant will respond to the new consolidated Complaint within thirty (30) days of its filing.
- 2) Four Motions Plaintiffs filed for leave to submit additional evidence in opposition to Defendant's Motion to Dismiss (Dkts. 90, 97, 105, and 137) are DENIED;
  - 3) Plaintiffs' Motion for Leave to File Third Amended Complaint (Dkt. 72) is DENIED;
  - 4) Plaintiffs' Motion for Leave to File Fourth Amended Complaint (Dkt. 103) is DENIED;
  - 5) Defendant's Motion in Limine to Exclude the Opinion Testimony of Christopher W. Martin (Dkt. 113) is GRANTED. If Plaintiffs later determine that different opinions from Mr. Martin are required, they shall seek leave of court before providing a new report from Mr. Martin;
  - 6) Defendant's Motion to Consolidate (Dkt. 139) is GRANTED. This case shall be consolidated into Case No. 2:12-cv-197-RJS-BCW for all purposes. Additionally, pursuant to the stipulation of all parties at the January 26, 2016 hearing, Case No. 2:14-cv-928-RJS-BCW shall also be consolidated into Case No. 2:12-cv-197-RJS-BCW for all purposes. All documents pertaining to any of these three matters henceforth shall be filed on the lower-numbered docket, 2:12-cv-197-RJS-BCW; and
  - 7) Defendant's Motion to Strike Jury Demand (Dkt. 140) is DENIED WITHOUT PREJUDICE.

**Case No. 2:14-cv-928-RJS-BCW**

Pursuant to the stipulation of all parties at the January 26, 2016 hearing, this case and Case No. 2:14-cv-149-RJS-BCW shall be consolidated into Case No. 2:12-cv-197-RJS-BCW for all purposes. All documents pertaining to any of these three matters henceforth shall be filed on the lower-numbered docket, 2:12-cv-197-RJS-BCW.

**CONCLUSION**

Case Nos. 2:14-cv-149-RJS-BCW and 2:14-cv-928-RJS-BCW shall be consolidated into Case No. 2:12-cv-197-RJS-BCW for all purposes;

Once consolidation has occurred, the Clerk of Court is directed to close Case Nos. 2:14-cv-149-RJS-BCW and 2:14-cv-928-RJS-BCW;

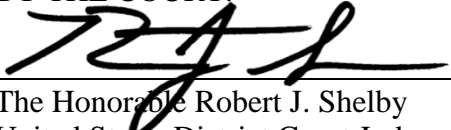
Prior scheduling orders in all three cases to be consolidated are VACATED, but the parties will abide by the following deadlines and dates in the consolidated case, Case No. 2:12-cv-197-RJS-BCW:

1. Plaintiffs shall file no later than February 25, 2016, a final, consolidated Complaint in Case No. 2:12-cv-197-RJS-BCW which will govern the consolidated case;
2. Defendant will respond to the consolidated Complaint within thirty (30) days of its filing, with briefing on any Motion(s) to Dismiss to proceed under the applicable Rules;
3. The parties shall reserve the time of June 14, 2016, at 1:30 p.m. for a hearing in the consolidated case; and

4. All discovery in the consolidated case, 2:12-cv-197-RJS-BCW shall conclude by May 4, 2016, as was set forth in the Scheduling Order entered in Case No. 2:14-cv-928-RJS-BCW (Dkt. 22).

SO ORDERED this 27th day of January, 2016.

BY THE COURT:

  
The Honorable Robert J. Shelby  
United States District Court Judge